



**CALIFORNIA  
HIGH-SPEED RAIL  
AUTHORITY**

**BRIEFING: MARCH 2012 BOARD MEETING AGENDA ITEM #4**

**TO:** Chairman Richard and Board Members

**FROM:** Thomas Fellenz, Chief Counsel

**DATE:** March 1, 2012

**RE:** Policy on Subcontractor Identification on Design-Build [DB] Contracts

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**Background/Discussion:**

To prevent a prime contractor from using a subcontractor's bid to prepare its bid and then shopping that bid to get a lower price, the California Subcontracting Act requires bidders for public contracts to list the names of all subcontractors who will perform work in an amount in excess of one-half of 1 percent of the prime contractor's bid.

Since the design-build contract will require the contractor to furnish the design of the Project, complete plans and specifications will not be available prior to submission of proposals. It will therefore be impossible for the contractor to obtain firm bids from subcontractors prior to submission of the contractor's bid so as to enable the prime contractor to identify subcontractors at time of proposal submission in accordance with the Act.

In addition, the scope of the construction work to be performed pursuant to each proposed design-build contract is so large that it will not be possible for the prime contractor to perform it all in-house. The Subcontracting Act includes an exemption that permits public agencies to allow contractors to award subcontracts post award upon a finding of public necessity.

For the reasons set forth above, public necessity requires that the proposers for each design-build contract be allowed to postpone identification of subcontractors who would otherwise be required to be identified under the Act at the time of bid submission, subject to the prime contractor's compliance with the procedure set forth in the proposed resolution for the Board consideration.

**Recommendations:**

Approve a design-build subcontractor identification Board resolution that allows proposers for each design-build contract to postpone identification of subcontractors at the time of bid submission, subject to the prime contractor's compliance with specific procedures as set forth in the proposed resolution #HSRA 12-03.

**Attachments:**

Resolution #HSRA 12-03



## **Resolution #HSRA 12-03**

### **RESOLUTION REGARDING POLICY FOR SUBCONTRACTOR IDENTIFICATION FOR DESIGN-BUILD CONTRACTS**

WHEREAS, the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 et seq. (the "Act"), requires prime contractors to identify their major subcontractors when submitting bids to a public agency for construction of public works; and

WHEREAS, the purpose of the Act as stated in Section 4101 is to prevent bid shopping, bid peddling and unfair competition and resulting poor quality of material and workmanship, insolvencies, loss of wages to employees and other evils; and

WHEREAS, the California High-Speed Rail Authority (the "Authority") plans to issue procurement packages requesting submission of proposals for multiple design-build contracts for the entire high speed train system project (the "Project"); and

WHEREAS, Section 4109 of the Act permits a contractor to enter into subcontracts for work, without having designated a subcontractor for such work in the original bid, in the event of public necessity.

NOW, THEREFORE, the Board finds as follows:

1. It is in the best interests of the Authority to use the design-build project delivery method for the Project, to serve the goals of expediting completion of the Project, providing greater cost certainty, and reducing risk of Project delay.
2. The scope of the construction work to be performed pursuant to each proposed design-build contract is so large that it will not be possible for the prime contractor to perform it all in-house.
3. Since the design-build contract will require the contractor to furnish the design of the Project, complete plans and specifications will not be available prior to submission of proposals. It will therefore be impossible for the contractor to obtain firm bids from all subcontractors prior to submission of the contractor's bid so as to enable the prime contractor to identify all subcontractors at time of proposal submission in accordance with the Act.

The Board hereby resolves as follows:

- A. For the reasons set forth above, public necessity requires that the proposers for each design-build contract be allowed to postpone identification of each and every subcontractor who

would otherwise be required to be identified under the Act at the time of bid submission, subject to the prime contractor's compliance with the procedure set forth below.

B. The following procedure is hereby adopted by the Board, and shall be adhered to by the prime contractor under each design-build contract in selecting its subcontractors: The prime contractor will, prior to soliciting any bids for performance of work or labor or rendering of services in or about the construction of the Project or for special fabrication and installation of a portion of the work for the Project, submit to the agency for its review and approval (which approval will not be unreasonably withheld) a reasonable procedure for the conduct of the bidding and approval process applicable to all such subcontracts (or combination of subcontracts with a single subcontractor) with a price in excess of 1/2 of 1% of the difference between the total bid price and the amount bid for provision of such services. Such procedure shall include times for each step of the process and shall provide that award of any subcontract will go to the lowest responsive bid by a responsible bidder approved by the Authority (which approval shall not be unreasonably withheld). The competitive bid procedures used by the Authority for its construction contracts are hereby acknowledged as being acceptable to be used by prime-contractors. The prime contractor shall promptly notify the Authority in writing of the identity of each subcontractor selected.

The prime contractor shall not enter into any subcontracts (or combination of subcontracts with a single subcontractor) with a total price in excess of 1/2 of 1% of the difference between the total bid price and the price bid for such services, except in accordance with the foregoing procedure. Once a subcontractor approved by the Authority has been selected for any such work, the prime contractor shall not have the right to make any substitution of such subcontractor except in accordance with the provisions of the Act.

Vote:

Date:

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